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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 CR 548 (PAC)  
Telephone Conference

5 JOSHUA SCHULTE,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 August 17, 2020  
11:00 a.m.

10 Before:

11 HON. PAUL A. CROTTY,

12 District Judge

13  
14 APPEARANCES

15 AUDREY STRAUSS

Acting United States Attorney for the  
Southern District of New York

16 MATTHEW J. LaROCHE

17 Assistant United States Attorney

18 FEDERAL DEFENDERS OF NEW YORK

Attorneys for Defendant

19 BY: SABRINA P. SHROFF

EDWARD S. ZAS

20 COLSON LAW PLLC

21 Attorney for Defendant

22 BY: DEBORAH A. COLSON

23 ALSO PRESENT:

DANIEL HARTENSTINE, CISO

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1 (The Court and all parties appearing telephonically)

2 THE DEPUTY CLERK: Judge, I'll call out the case.

3 Counsel for the government, please state your  
4 appearance.

5 MR. LAROCHE: Good morning, your Honor. Matt Laroche  
6 for the government.

7 THE COURT: Hello, Mr. Laroche.

8 MR. LAROCHE: Hi, Judge.

9 THE DEPUTY CLERK: For the defense.

10 MS. SCHROFF: Good morning, your Honor. For  
11 Mr. Schulte, Mr. Edward Zas, Deborah Colson, and Sabrina  
12 Shroff.

13 THE COURT: Good morning to all.

14 All right. We are proceeding here by video  
15 conference, mostly audio conference, under Section 15002 of the  
16 CARES Act and a standing order issued by Chief Judge McMahon  
17 pursuant to the CARES Act.

18 I understand that Mr. Schulte is consenting to  
19 participate in today's conference by video conference. We have  
20 a waiver from Ms. Shroff, is that correct?

21 MS. SCHROFF: Your Honor, this is Sabrina Shroff.

22 That is correct, your Honor. We had previously  
23 discussed the standing order of the Chief Judge and the waiver  
24 of Mr. Schulte. We did not have a call with him this morning,  
25 but he has indicated previously that he so consents, and I have

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1 noted that on the form and submitted it to the chambers, to  
2 your chambers.

3 THE COURT: All right. Thank you very much.

4 First question I have deals with the grand jury  
5 proceeding. There was a hearing before Judge Failla on July 6  
6 and we gave Mr. Schulte until August 3 to inform the court  
7 whether he had any outstanding issues. I never got a report as  
8 of August 3.

9 Does Mr. Schulte have any objections or concerns with  
10 regard to the grand jury?

11 MS. SCHROFF: Your Honor, I informed the government we  
12 are e-mailing -- I apologize for not writing to the court. But  
13 we are preserving the same objection that counsel for Mr. Balde  
14 preserved before Judge Failla, and in the interest of moving  
15 and being expedient, we maintain those objections but are  
16 willing to follow along with the steps that are being taken in  
17 United States v. Balde, which is the case pending before Judge  
18 Failla.

19 THE COURT: So, Ms. Shroff, I don't have to do  
20 anything with regard to your objections?

21 MS. SCHROFF: You do not have to do anything, your  
22 Honor. I do note for the court that this morning we received a  
23 protective order from the government by e-mail. Mr. Laroche  
24 informed us that it is the same protective order Judge Failla  
25 entered in United States v. Balde. We have not had an

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1 opportunity to review it.

2 I do know that we have been in contact with counsel  
3 for Mr. Balde. There was litigation on that protective order.  
4 By we, I mean the defense, did not prevail on certain of its  
5 objections. We would just like a week to see what those  
6 objections were. If we need to invoke the intervention of this  
7 court, we will write and so inform. And if not, we will  
8 proceed with the same protective order that was entered over  
9 the defense's objection in United States v. Balde.

10 THE COURT: You will let me know by Monday, August 17,  
11 is that correct?

12 MS. SCHROFF: Your Honor, today is August 17. So I  
13 think a week from today would be fine.

14 THE COURT: Excuse me. A week from today.

15 MS. SCHROFF: That's OK.

16 THE COURT: The 24th.

17 MS. SCHROFF: Sure.

18 THE COURT: August 24. All right.

19 On the last conference, the parties agreed to consider  
20 a trial date. I wonder what the status of that is, Mr. Laroche  
21 or Ms. Shroff?

22 MR. LAROCHE: Your Honor, from the government's  
23 perspective, we are prepared, I think as we were last -- during  
24 the last conference to set a trial date. We, again, believe  
25 that we could get the pretrial litigation done efficiently, and

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1 the government also believes that the next retrial would be  
2 shorter because the government plans to be more efficient in  
3 its presentation of evidence and cut down the total number of  
4 witnesses for which it would like to call during that trial.

5 We understood that one of the issues that was raised  
6 by Ms. Shroff during the last conference was access to the  
7 SCIF. Based on some conversations we have had with the CISO,  
8 we understand that there is a proposed solution to that. I  
9 don't know if Mr. Hartenstine is on this conference call, but  
10 our understanding is that Mr. Hartenstine is working to create  
11 another location that would be easier to produce Mr. Schulte to  
12 and would also provide for separation between Ms. Shroff and  
13 Mr. Schulte for purposes of maintaining as much social  
14 distancing as possible in light of COVID.

15 Our understanding is that it is underway and that it  
16 would be something that could be complete hopefully in the near  
17 term, which would allow Mr. Schulte to be produced on a more  
18 regular basis.

19 In addition, we understand that Mr. Schulte would  
20 still have access to the original courthouse SCIF, although,  
21 you know, obviously there are additional hurdles for getting  
22 him there. We think that between those two options, we are at  
23 a point, at least from the government's perspective, where we  
24 think we can set a trial date. And we understand that the  
25 courthouse is beginning to consider a basis for trials coming

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1 this fall, and we were hoping to be considered among those  
2 groups, if at all possible.

3 MR. HARTENSTINE: Your Honor, Dan Hartenstine,  
4 Security Classification Security Officer. I'm on the call and  
5 available to speak to our options for a SCIF, if your Honor so  
6 desires.

7 THE COURT: Why don't you elaborate on the options  
8 that you have been working on, Mr. Hartenstine.

9 MR. HARTENSTINE: Sure, Judge.

10 So on Friday, there was approved funding for a  
11 conversion of a United States Marshal's interview room into a  
12 SCIF. So the room is bifurcated by a mesh glass screen, which  
13 would seem to alleviate some of the concerns regarding contact  
14 between Ms. Shroff and Mr. Schulte or anyone else on the  
15 defense team.

16 So counsel would work on one side of the room and the  
17 defendant would work on the other side of the room, but they  
18 would be able, using the screen, to share information, computer  
19 screens and the like, and continue working on the case while  
20 not directly in contact with each other, as they would be in  
21 the SCIF, which is a small space and makes it difficult for  
22 social distancing.

23 THE COURT: What SCIF are you referring to; that's the  
24 one that Mr. Schulte has had access to before?

25 MR. HARTENSTINE: Correct. The one that we used

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1 through pretrial in the first trial.

2 THE COURT: Where is the location of this new option  
3 that you're talking about, Mr. Hartenstine?

4 MR. HARTENSTINE: It is located on the fourth floor of  
5 the Moynihan Courthouse in marshal's prisoner interview space.

6 THE COURT: Ms. Shroff.

7 MS. SCHROFF: Well, thank you, your Honor.

8 I have been in touch with the CISO and this is the  
9 first time hearing of this. I have no idea what that space  
10 looks like. I do not think anyone from my team, which includes  
11 an expert that we still don't have, would be willing to enter  
12 into a marshal space into which other individuals from the MCC  
13 come in and leave.

14 Additionally, I would just note for this court that  
15 the last time that this was proposed, we declined to use the  
16 SCIF because it is impossible to work with a client over a mesh  
17 screen.

18 I would like to just take a moment, your Honor, to  
19 update this court. Knowing that the government is pushing a  
20 trial date on a defendant who is now convicted of two counts,  
21 and knowing that, as Judge Furman put it, setting a trial date  
22 in these times is pure fantasy, nevertheless, the defense has  
23 taken steps to try and ensure that we honor what the court  
24 wants us to do and reach out to the expert that we have.

25 Our expert is over 80 years old. He is not at all

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1 inclined to enter into the SCIF, let alone a SCIF where other  
2 individuals from MCC are brought in. he also declined -- and  
3 the court is familiar with this expert, Dr. Bellovin -- he  
4 declined to go to a SCIF right now. He is a full-fledged  
5 professor at Columbia and also has declined to teach in person  
6 and is teaching remotely.

7 In light of that, your Honor, we asked -- and I would  
8 prefer for this to be ex parte and not open to the public --  
9 but I can certainly detail for the court but tell you generally  
10 that we have -- we may be in a position where we may not be  
11 able to use Dr. Bellovin at all, given his medical issues and  
12 his age. We have already started to try and find new experts  
13 that can step in for Dr. Bellovin.

14 We've contacted two individuals, one of which we  
15 highlighted for the CISO but we have not been able to come to  
16 any real agreement with any of them. We are unsure right now  
17 if they are even the right expert. Again, ex parte, I can  
18 surely detail for you the steps we have taken to try and get an  
19 expert. So far, we have not been able to secure one, let alone  
20 finding somebody with Dr. Bellovin's qualifications. We have  
21 the added issue of people's schedules because at least one of  
22 them has a prior commitment. One of them has a cost that is  
23 quite exorbitant, and we are still working on trying to get an  
24 expert in place.

25 Additionally, your Honor, Ms. Colson is brand new to



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1 this case. She has not even met the client. We have made  
2 several attempts to have even, like, a video meeting as a team  
3 with Mr. Schulte. That has proven to be difficult and almost  
4 impossible.

5 Finally, your Honor, I note this. It is fine for the  
6 government's to keep saying they are going to call fewer  
7 witnesses, but it only puts the burden on us to call the  
8 witnesses they are not calling. At the last trial, we had  
9 asked for several adjournments, which were denied. We  
10 proceeded to trial. Since that trial, Mr. Schulte has a long  
11 list of things and tasks that he expects his lawyers to  
12 accomplish before a retrial.

13 Mr. Schulte is entitled to that. Mr. Schulte is  
14 entitled to prepare a defense that fits the new way the  
15 government is going to charge and proceed to trial on this.  
16 So, your Honor, we are trying. We are really trying, but I do  
17 not think we are in any position to set a trial date now. I  
18 hardly think this should be the test case to proceed to with a  
19 trial in the fall. This is not a one-week trial and a  
20 possession case, which is what I understand judges want to try  
21 and see how trials go.

22 We have been following the mechanics of how --

23 THE COURT: You have been following what?

24 MS. SCHROFF: We are following --

25 THE COURT: Ms. Shroff, you've been following what?

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1 MS. SCHROFF: We have been trying to follow the  
2 mechanics by which, like, judges are being age to hold hearings  
3 or hold any actual live testimony, and it is very difficult.  
4 People are testifying through masks. We can only communicate  
5 with the client through a phone. Only one lawyer is able to  
6 sit at a desk. All of these issues just raise issues of due  
7 process for Mr. Schulte.

8 Mr. Schulte's consulted with his team. He himself, a  
9 man who has pushed trial all along, has asked us to tell the  
10 court that he is in need of the time to properly prepare, to  
11 properly get an expert, and to prepare for a new trial. It is  
12 a brand new trial, and the government concedes it is not going  
13 to try it exactly the same way.

14 So we have a lot of work to do. We are trying to get  
15 it done. We are not in a position right now to set a trial  
16 date.

17 MR. ZAS: Judge, can I chime in with one additional  
18 thought?

19 THE COURT: Yes, Mr. Zas.

20 MR. ZAS: On Mr. Hartenstine's arrangement to have a  
21 new or additional SCIF, I know the Federal Defenders retained  
22 an epidemiologist to try to help us with any transition back to  
23 normalcy at the office. I think it is the same expert the  
24 U.S. Attorney's office is using.

25 I was wondering if it would make sense to have our

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1 epidemiologist contact Mr. Hartenstine and maybe try to -- it  
2 would help us all, I think, on the defense side, probably  
3 everyone, if we had someone of an expert who could say that  
4 this SCIF is safe, at least certain steps were taken.

5 I'm sorry. Say it again, Judge.

6 THE COURT: When you say "this SCIF," Mr. Zas, are you  
7 referring to the one in the marshal's office or the one that  
8 you used previously or both?

9 MR. ZAS: Well, I think only one that we would have to  
10 use. It would help us both to comfort, you know, the lawyers  
11 who all have families and children, of course, but also to  
12 maybe persuade an expert that it is safe.

13 I think I am speaking now of the new and improved  
14 SCIF, if you will, because the other SCIF really had no  
15 ventilation at all. It was a very cramped space to put people  
16 in, especially in a pandemic.

17 So my proposal would be to have the epidemiologist  
18 talk to Dan or the people who are working with Dan just to get  
19 his input so he can say yes, this is safe if certain steps are  
20 taken. I think that might go a long way to giving people the  
21 comfort that they would like.

22 MR. HARTENSTINE: Your Honor, this is Dan Hartenstine.

23 I am more than happy to speak with an epidemiologist,  
24 including the Federal Defenders' epidemiologist, regarding the  
25 situation in either SCIF.

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1 THE COURT: How long would that take, Mr. Hartenstine?

2 MR. HARTENSTINE: Well, Judge, I haven't engaged in  
3 the process yet, but in other cases -- so I'm not sure about  
4 the length of time, but I could speak with him, you know,  
5 certainly speak with him this week and get the process  
6 underway.

7 THE COURT: Why don't you do this.

8 MR. HARTENSTINE: I will.

9 THE COURT: Can you give us a report by next Monday?

10 MR. HARTENSTINE: That sounds good, your Honor.

11 THE COURT: You take a look at two SCIFs now, the one  
12 that was used previously during the trial and this new proposal  
13 in the -- although Ms. Shroff doesn't seem to like it very  
14 much -- about the new one in the marshal's office.

15 MR. HARTENSTINE: That sounds good, your Honor.  
16 I'll do so.

17 MS. SCHROFF: Your Honor, if I may?

18 THE COURT: Yes.

19 MS. SCHROFF: Honestly, I don't like it. I really  
20 don't like it, and I want the court to know that it creates a  
21 personal burden for me. My husband is immunosuppresant. The  
22 fact that my son, who is a teenager, has a job has meant my  
23 husband had to rent another apartment for four weeks.

24 We all are struggling with very personal issues that I  
25 feel like I shouldn't have to bring up in an open court room

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1 right now. But we are not in a position to simply go along  
2 with conditions without somebody telling us that it is safe.

3 Mr. Zas is over 50 years old, and we have a lot of  
4 issues going on. We need some clarity and certainty that we  
5 are actually safe. I don't think it is fair for the  
6 government --

7 THE COURT: That's the whole purpose. That's the  
8 whole purpose of the epidemiologist making this examination, to  
9 find out what is not safe.

10 MS. SCHROFF: I understand that, your Honor. I'm just  
11 pointing out to the court that we are trying our best, and  
12 honestly, on the expert front, we have reached out nationwide  
13 at this point. It is not curtailed to even the East Coast. We  
14 have literally reached out nationwide.

15 THE COURT: Well, we're talking about having an  
16 epidemiologist examine at least two locations which might be  
17 possible, have the potential for serving as SCIFs.

18 That seems to be a helpful undertaking at this stage.  
19 We are trying to find out if they do meet the criteria, and if  
20 they don't meet the criteria, what steps can be made, if any,  
21 so that they do meet the criteria. It seems to me we have to  
22 start looking at what is possible.

23 Dan, look at those. You'll consult with the  
24 epidemiologist and report to us on next Monday, correct?

25 MR. HARTENSTINE: Correct, your Honor.

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1           Ms. Shroff or Mr. Zas, if you wouldn't mind putting me  
2 in touch with the epidemiologist, then I can start working on  
3 that.

4           MR. ZAS: Not a problem, Dan.

5           MR. HARTENSTINE: Thank you, Ed.

6           THE COURT: OK. Ms. Shroff, it might involve the  
7 difficulties that you raise. In light of this all, I'm going  
8 to ask you if you can set a trial date. I know you don't want  
9 to set a trial date, but what would be a reasonable trial date  
10 to set?

11           MS. SCHROFF: I honestly don't know, your Honor. I  
12 really don't know. I told Judge Torres the same thing this  
13 morning, and we have been telling every judge exactly the same  
14 thing. We don't know.

15           Look, you know, I'm happy to get on an ex parte call  
16 with the court and talk about the experts that we reached out.  
17 I think Mr. Hartenstine can also update the court.

18           I don't know. I seem to have no expert that I can  
19 start work with. I have a brand new lawyer on the case who is  
20 unable to get up to speed in the time now.

21           I ask the court, your Honor, maybe we can follow the  
22 protocols that Judge Broderick has followed in Saipov, and I  
23 think Mr. Laroche is on that case and, you know, see where we  
24 are in another 30 days. I don't think it is feasible in a case  
25 like this to set a trial date that won't hold. If you want to

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1 set a trial date, set a trial date. I just don't think it will  
2 hold. There is too many unknowns. I don't even know what is  
3 going to happen in the fall.

4 Will there be a second wave? Nobody knows. I can't  
5 go to Washington and come back without a 14 days' quarantine.  
6 Washington, DC is now on the quarantine list. Nothing I can do  
7 about that. Things seem to change week to week.

8 Look, honestly, it's not that I don't want to set a  
9 trial date. I just think that Judge Furman is right, setting a  
10 trial date now is a fantasy trial date. If you want to set a  
11 trial date, set a trial date. I just don't see how it can  
12 hold. It seems more prudent for everybody to think about the  
13 facts that there are actual detailed difficulties and to come  
14 back in another 30 days and update the court.

15 THE COURT: Well, what is going to happen in 30 days  
16 that is going to clarify the situation?

17 MS. SCHROFF: For one thing, in 30 days we will know  
18 what the epidemiologist and the CISO has in mind for a SCIF.  
19 Next thing we'll know is how many of this trial team is even  
20 willing to go into a SCIF, even depending on what the  
21 epidemiologist said. Apparently we're told that nobody can be  
22 forced to go into a SCIF or in a courtroom.

23 THE COURT: Just as nobody can be forced to sit on a  
24 jury.

25 Excuse me. Nobody can be forced to sit on a jury

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1 either, and we haven't impaneled any jurors. That is going to  
2 take place, the earliest, in October.

3 MS. SCHROFF: Right.

4 THE COURT: Tell me why.

5 MS. SCHROFF: There is not even an impaneled grand  
6 jury. Even the last grand jury that indicted somebody, the  
7 cases before Judge Abrams, I was told that five of the grand  
8 jurors zoomed in. They didn't even have a quorum in the last  
9 grand jury, let alone a full-fledged jury. We can't even get  
10 a grand jury to sit right now.

11 That is what will happen in 30 days, and I actually  
12 believe that once we have some kind of clear idea what is going  
13 to happen with public schools, look, Governor Cuomo won't even  
14 let me go into a restaurant to eat a meal. If it is not safe  
15 to go into a restaurant for an hour-long meal, why is it safe  
16 for any one of us to go live or have jurors sit for a two-week  
17 trial?

18 This is not a four-day trial, right? Lean as the  
19 government wants it to be, it is not a four-day trial. It is  
20 not a Monday through Friday case, like a felon in possession  
21 case. It is not. That is the reality.

22 THE COURT: All right. Mr. Laroche, what do you want  
23 to say?

24 MR. LAROCHE: So, your Honor, there was a lot there.  
25 I mean, I think, listen, we obviously have no objection to the



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1 epidemiologist. We think that is a prudent step.

2 To be clear, the government is not in any way  
3 suggesting that those concerns are not reasonable on defense  
4 counsel's side at all. We are dealing with many of the same  
5 issues on our side.

6 I will say that I think, at some point, defense needs  
7 to identify the things that they believe needs to happen for a  
8 trial to go forward. Perhaps that can be done, and we think  
9 should be done, should have been done by now or should be done  
10 in the next 30 days.

11 Once we lay those things out for your Honor, we will  
12 be able to determine whether the trial date that we think  
13 should be set can hold and when it can happen.

14 But just raising a myriad of issues on the call, many  
15 of which have nothing to do, I don't think, with setting the  
16 date itself, much of which, for example, like the Saipov case,  
17 have really no similarity to the issues in this case are  
18 helpful.

19 So, you know, we don't have an objection to the  
20 epidemiologist consulting with Mr. Hartenstine and we don't  
21 have an objection to updating the court. I think our  
22 expectation is that the defense would be prepared by that  
23 30-day time to identify the issues that they believe need to be  
24 resolved so that we can address them in a more systemic  
25 fashion. But right now, just raising a whole host of issues,

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1 including, you know, who can go to dinner or not, I don't think  
2 is helpful.

3 We would ask, you know, after Mr. Hartenstine has had  
4 an opportunity to talk with the epidemiologist, defense updates  
5 the court as to what things that it believes needs to happen to  
6 set this date.

7 MS. SCHROFF: Your Honor, may I address the court  
8 briefly?

9 THE COURT: Briefly.

10 MS. SCHROFF: Thank you, your Honor.

11 I brought up who can go to dinner because it is the  
12 closest analogy to a closed room, which is a SCIF. I brought  
13 up Saipov because it is the closest case, for Mr. Laroche is  
14 also the prosecutor, and I believe it involves travel. It  
15 may --

16 THE COURT: Nobody is questioning --

17 Ms. Shroff, nobody is questioning your arguments. I  
18 mean, I understand.

19 MS. SCHROFF: Thank you, your Honor.

20 THE COURT: I understand your position. You made it  
21 very clear.

22 What the government says is they think that they want  
23 a trial date set as soon as possible after normal court  
24 operations resume. It is not entirely clear when normal court  
25 operations are going to resume for all the reasons that you

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1 cite and many more that haven't been cited.

2 But the hope is that criminal jury trials will start  
3 again in October and if we get a jury assembled and to get  
4 people willing to serve on those juries. Because no judge I'm  
5 aware of is going to tell somebody to sit in the courthouse  
6 while this pandemic is going on, if any person has a reasonable  
7 objection, who is sitting on a jury.

8 On the other hand, Ms. Shroff, I think you have to be  
9 more specific than the general objections you have been  
10 raising. I'm going to give you 30 days until mid September to  
11 list all the things that you think have to be accomplished  
12 before a trial can go forward.

13 MS. SCHROFF: Sure, your Honor.

14 Your Honor, may we brief some of those objections  
15 ex parte? Because I do not want to have to share my expert  
16 issues with the government at this point.

17 Just so the court is aware, just because Mr. Laroche  
18 isn't aware of our conversations with Mr. Hartenstine about the  
19 potential experts does not mean that we haven't worked on them  
20 since the last appearance we had earlier this -- two months  
21 ago.

22 We have apprised Mr. Hartenstine of the issues, we  
23 have apprised Mr. Hartenstine of names and, again, if the court  
24 wants to have an ex parte appearance with us, we are happy to  
25 update the court that way, or in writing, in 30 days.

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1 MR. HARTENSTINE: Your Honor, Dan Hartenstine.

2 If I might quickly. Ms. Shroff is absolutely correct.

3 We have been in touch regularly throughout the pandemic since  
4 the last trial. I'm assisting her with her expert issues,  
5 which do exist, and, you know, I certainly have concerns about  
6 Ms. Shroff, anyone's level of comfort, you know.

7 But just to clarify, my role would really be to  
8 explain the layout of the room, get any information to the  
9 epidemiologist necessary, and then let him make his assessment  
10 in a neutral capacity and go from there.

11 So I wouldn't be making a determination about, you  
12 know, the potential safety of the room, I would just give him  
13 the information that he needs.

14 THE COURT: All right. David, can you give me a date  
15 in mid September, 30 days from today.

16 THE DEPUTY CLERK: Yes. Just a second.

17 (Pause)

18 THE COURT: David Gonzalez.

19 THE DEPUTY CLERK: Judge, can you hear me? This is  
20 David.

21 THE COURT: Yes. I want a date 30 days from today in  
22 mid September as to when we'll get a report from Ms. Shroff.

23 THE DEPUTY CLERK: September 16.

24 THE COURT: All right. That list ought to include  
25 motions as well that both sides want to make, that Ms. Shroff

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1 contemplates making.

2 Ms. Shroff, do you contemplate making motions?

3 Mr. Laroche, I cut you off.

4 MR. LAROCHE: I'm sorry, your Honor. I just wanted  
5 to -- on that front, I think, as I believe we've said before, I  
6 don't think we need a terribly long runway to this trial. And  
7 I know during the last conference that the court had, I think,  
8 slated potentially January. I do think, even on this schedule,  
9 assuming we can reach an agreement or come to some sort of  
10 consensus on when things could move forward, that we still  
11 could -- assuming things, you know, there is a lot of variables  
12 we get that, assuming things go well, we could still  
13 potentially have a January trial.

14 On that front, related to the motions you just raised  
15 we'll be prepared to identify, I think, what we expect in terms  
16 of pretrial motion practice, and we would not expect it to be  
17 close to as long and lengthy as the first trial.

18 THE COURT: Ms. Shroff, do you have motions, too?

19 I would appreciate your listing them in the listing  
20 you're going to make on the 16th of September.

21 MS. SCHROFF: Your Honor, we make our motions after we  
22 see what the governments motions are. We can list ours, but we  
23 would like to be able to reciprocate and see what they are  
24 talking about. If they are going to try a different case, we  
25 are going to have to defend it differently. I would like to

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1 see what motions they make.

2 Your Honor, again, as the court has said, there are  
3 a lot of things in flux. But I don't see a January trial date  
4 here, and my letter will explain why.

5 THE COURT: Well, I'm going to have to see the joint  
6 submissions on your concerns to make it ex parte. I want  
7 submissions to be made jointly on the 16th of September. If  
8 there is really something you want to add after that, you can  
9 reply to those papers. I'll give you two or three days to  
10 reply. Make the submissions simultaneously.

11 In one of your letters, Ms. Shroff, you suggest that  
12 Mr. Schulte hasn't been getting his mail?

13 MS. SCHROFF: He has not been getting his mail at all.  
14 He does not have any of the papers that we sent him since the  
15 last trial. Mr. Lee from the Federal Defenders' office has  
16 mailed them to him several times. Our communications with him  
17 is limited in terms of the technology and, you know, having  
18 difficulty looking at or talking through issues.

19 I also want to note, your Honor, that it doesn't  
20 matter. We'll address them and we'll keep moving as fast as we  
21 can, and we'll update the court and then the court can do what  
22 it sees fit. I mean, your Honor, listen, if our schedule  
23 doesn't work, of course the court can assign Mr. Schulte new  
24 counsel. I have no objection to that either.

25 THE COURT: On what basis would I assign new counsel,

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1 Ms. Shroff?

2 MS. SCHROFF: Your Honor, look, if for any personal  
3 reasons that I cannot get a new trial going because of other  
4 issues that may be personal to me, if the government insists  
5 this case should be tried in January and if you're inclined to  
6 give a January trial date, I don't think I will be able to try  
7 a case in January given my personal issues.

8 THE COURT: OK. We'll cross that bridge when we come  
9 to it.

10 MS. SCHROFF: I frankly don't think it is feasible --  
11 look, why don't we do this. We'll try our best. We will let  
12 the court know where we are with the expert.

13 We will keep moving forward and, you know, we'll do  
14 the best we can, and then the court can decide. But we're  
15 certainly willing to do all we can, your Honor, to comply with  
16 what the court wants.

17 THE COURT: Good. So there won't be a trial in  
18 October, November December. I don't think we can do it by that  
19 time. You know, there are procedures -- you may be aware of  
20 this, both the government and Ms. Shroff, Mr. Zas -- about how  
21 cases are going to be, because there is limited courtroom space  
22 for jury trials.

23 It is not like all the jurors will be impaneled in all  
24 the courtrooms. There is limited space in courtrooms too. So  
25 there is a number of -- I think there is more trials, more

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1 people who want trials than the trial space can accommodate at  
2 this particular time.

3 The slots for October, November December are filling  
4 up. I'm thinking of a trial in January or February, which is  
5 five months from now, which out to be plenty of time for all  
6 parties to get ready for the trial. But I'll make a further  
7 determination when I see the parties' papers on September 16.

8 is there anything else that anybody wants to take up?

9 Ms. Shroff? Yes, Ms. Shroff?

10 MS. SCHROFF: No, your Honor. Thank you, actually. I  
11 do not have anything further. We will be happy to submit our  
12 papers on the 16th .

13 THE COURT: Mr. Laroche?

14 MR. LAROCHE: Your Honor, the government would just  
15 move to exclude time until September 16 under the Speedy Trial  
16 Act for all of the reasons we have been discussing, in light of  
17 COVID and pretrial preparation that will be necessary.

18 THE COURT: Ms. Shroff?

19 MS. SCHROFF: Your Honor, we have no objection.  
20 Especially in light of fact that we have a motion pending  
21 before the court, time is automatically excluded anyway. So  
22 I don't think the court needs an additional basis, but if you  
23 need one, we certainly consent to it, your Honor.

24 I remind the court that we briefed our issues, we have  
25 a reply due on September 15th and motion practice automatically



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1 excludes time under the Speedy Trial Act.

2 THE COURT: All right. What is due on September 15?  
3 The 16th, isn't it?

4 David, it is the 16th, isn't it?

5 THE DEPUTY CLERK: Yes, the 16th. Monday, the 16th.

6 THE COURT: Of September.

7 THE DEPUTY CLERK: I believe she's referring to --

8 MS. SCHROFF: Your Honor, I'm sorry.

9 THE COURT: When do you want to have the ex parte  
10 phone conference?

11 MS. SCHROFF: Your Honor, could we do it after  
12 September 4?

13 Can we pick a date with the court after this call and  
14 set it up?

15 THE COURT: That's three weeks from today, isn't it?  
16 I was thinking something either this week or next week. I  
17 prefer this week.

18 MS. SCHROFF: If the court wants it.

19 THE COURT: David, give me a date on Thursday or  
20 Friday.

21 THE DEPUTY CLERK: Thursday, September 20, at  
22 2:00 p.m.

23 THE COURT: OK.

24 MS. SCHROFF: Ed, are you available?

25 MR. ZAS: Hang on.

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1 MS. SCHROFF: Your Honor, do you think you could give  
2 us next week Monday?

3 I know Mr. Zas has three briefs due to the Circuit  
4 this week. Could we have Monday?

5 THE COURT: Monday, the 24th?

6 MS. SCHROFF: Yes, please.

7 THE COURT: What does it look like, David?

8 THE DEPUTY CLERK: Monday, the 24th, at 2:00 p.m.

9 THE COURT: All right.

10 MS. SCHROFF: Is that good?

11 MR. ZAS: Yes. Thank you.

12 MS. SCHROFF: Thank you, your Honor. I'm hoping  
13 Ms. Colson is still available. We don't see each other, but  
14 I hope it is still good for all of us.

15 THE COURT: Well, I hope Ms. Colson can make it, but  
16 we are going to have the conference anyway.

17 MS. SCHROFF: Yes, your Honor.

18 THE COURT: If there is nothing else, that concludes  
19 this conference. The time between now and September 16 will be  
20 excluded in the interest of justice to do so.

21 That concludes the conference. Thank you.

22 (Adjourned)  
23  
24  
25